THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.3272 OF 2006

DATED 24th FEBRUARY, 2006

BETWEEN

M Anjaneyulu

… Petitioner

and

The District Collector, Ongole, Prakasham District

And others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.3272 OF 2006

ORDER:

The petitioner is Sarpanch of Mallavaram Gram Panchayat. The District Collector initiated action under Section 249(1) of A.P.Panchayat Raj Act, 1994 (for short, the Act). As required under the provision, the District Collector issued a show cause notice bearing Roc.No.2075/2005. (Pts) A1, dated 12.01.2006, calling upon the petitioner to submit explanation within fifteen days from the date of receipt of the said notice to the allegations of certain irregularities pointed out therein. The petitioner did not submit explanation immediately. However, he got issued a notice through his counsel on 25.01.2006 denying all the allegations. Be that as it is, the petitioner filed the present writ petition seeking a writ of Mandamus declaring the action of the respondents in taking steps to remove the petitioner from the Office of Sarpanch by issuing show cause notice as illegal and arbitrary. In effect, the petitioner assails the show cause notice issued by the District Collector.

The learned counsel for the petitioner submits that without conducting any enquiry, the first respondent initiated action under Section 249(1) of the Act and therefore, the entire action is without jurisdiction. This Court is afraid the submission is misconceived. The show cause notice is issued on allegations of irregularities, after

ascertaining the particulars from Sub Treasury Officer, Ongole, and also from the Office of the Zilla Parishad, Ongole regarding release of Sampurna Grameena Rojgar Yojana (SGRY) funds. Petitioner already submitted explanation and there cannot be any doubt that the first respondent would consider the explanation and pass appropriate orders. By filing the present writ petition, the petitioner seeks to restrain the statutory authority from passing orders in exercise of powers conferred under the Statute i.e., Section 249(1) of the Act. Be that as it is, it is now axiomatic that at the stage of show cause notice, this Court cannot entertain a writ petition interdicting the statutory action. A reference may be made to **Special Director v Mohd.Ghulam Ghouse**, wherein it was held as under.

> This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show-cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court. Further, when the court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is not accorded to the writ petitioner even at the threshold by the interim protection granted.

The apprehension of the petitioner is that without conducting enquiry, the District Collector might pass orders under Section 249(1) of the Act. In such an event, nothing prevents the petitioner to approach the District Collector and ask for enquiry to be conducted. The petitioner can even now do so.

The writ petition is misconceived and is accordingly dismissed. No costs.

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(V.V.S.RAO,J)

24.02.2006

pln